

# MEDICAL MARIJUANA ORDINANCES COMMUNITY MEETING

July 20, 2010, 6:00 p.m. – 8:00 p.m.

Roosevelt Community Center

## FINAL AGENDA

1. **Opening Remarks (6:00 p.m.)**
2. **Review March 30 Council Referral and June 22 Council Direction (6:05 p.m.)**
3. **Small Group Discussion (6:20 p.m.)**

During the small group discussion, attendees will have the opportunity to self-select a topic (see list below) to provide input that will help staff further develop the Ordinances for City Council consideration. Attendees will also have the opportunity to share any additional thoughts for City consideration.

  - **Registration Process & Requirements:** 10 Collectives, Priority Order, 1 Year Registration Term, Registration Fee, etc.
  - **Operating Requirements:** Safety & Security, Day & Hours of Operation, Owner/Management Requirements, Packaging, Maintenance of Records, etc.
  - **Taxing Marijuana Businesses:** Ballot Measure, Tax Rate Policy Options, etc.
  - **Land Use Policy:** Sensitive Uses & Distance Requirements, Cultivation, Public Noticing, etc.
4. **Large Group Discussion (7:10 p.m.)**

Each group will share themes that emerged from their small group discussion.
5. **Next Steps / Adjournment (7:50 p.m.)**
  - August 3, 2010 City Council Meeting
  - November 18 or December 13, 2010 City Council Study Session on Medical Marijuana (Tentative)

This meeting will be facilitated by Dr. Shawn Spano. Dr. Spano specializes in designing and facilitating public engagement forums and meetings.

## JUNE 22, 2010 COUNCIL DIRECTION

The memorandum from Mayor Reed and Council Member Oliverio, dated June 18, 2010 was approved:

1. With regard to collectives that are currently located in San José, direction is given to focus enforcement on the closure of any collective that is within 500 feet from sensitive uses in the staff report and/or any collective located outside the CG Commercial General Zoning District. Staff was further directed to return to Council with:
  - a. An analysis of the most appropriate level of concentration of such uses in a given area, similar to the ABC licensing model.
  - b. An analysis of other appropriate zoning designations which could be potential locations for the establishment of collectives, such as the CIC Combined Industrial Commercial and CG Commercial General Zoning designations.
2. Administration directed to conduct polling in July 2010 to inform on August 3, 2010 Council discussion on marijuana taxation.
3. On August 3, 2010, the City Attorney directed to present the Council with language to be approved for a November 2010 ballot measure that includes taxation of medical marijuana or any other legal uses.
4. Staff directed to schedule a Council Study Session in November 2010 on issues pertaining to medical marijuana collections after the results of the *"Regulate, Control and Tax Cannabis Act of 2010"* ballot measure area known. (Source: June 22, 2010 City Council Synopsis)

## MARCH 30, 2010 MEDICAL MARIJUANA COUNCIL REFERRAL

1. A draft ordinance establishing regulations for the control and taxation of Collectives and reflecting principles 1, 2, and 4 outlined in the Joint Memorandum dated March 25, 2010 from Mayor Reed and Vice Mayor Chirco:

*Principle 1:* San Jose recognizes that California law allows a patient's primary care giver to cultivate and possess marijuana for the personal medical purposes of the patient upon the recommendation of a physician;

*Principle 2:* San Jose will follow the guidance of the California Attorney General and the United States Attorney General in criminal enforcement of the laws regarding medicinal use of marijuana.

*Principle 4:* Individuals or entities that cultivate or distribute marijuana for profit are operating illegally under state law and are illegal under San Jose Municipal Code.

2. A community outreach plan; and,
3. An analysis for Council consideration about the process for placing the issue on the November 2, 2010 ballot asking for Citywide support for the restricted zoning of medical marijuana collectives/cooperatives in San José according to State law by taxing them at 3% per \$1,000 gross receipts including the allowance for indexing for inflation. (Source: March 30, 2010 City Council Synopsis and Minutes, Approved by the City Council on May 18, 2010)

## 1. Registration Process & Requirements

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City Ordinance ( <i>Title 6 of the San Jose Municipal Code</i> )	Policy Alternative(s)
<b>Maximum Medical Marijuana Collective Number:</b> Allows for a maximum of ten (10) Medical Marijuana Collectives in the City.	The City Council could expand or decrease the maximum number of Medical Marijuana Collectives. Staff is recommending ten (10) as the maximum number of Collectives in order to ensure that Title 6 and Title 20 provisions balance the availability of medical marijuana at approved Collectives, while sustaining a Regulatory Program within the proposed staffing plan. Any changes that require greater oversight or regulation would require an adjustment to the proposed staffing plan and Registration Fee.
<b>Registration Required &amp; Registration Term:</b> No collective shall operate in the City until after it has filed a registration form, paid all registration fees, and its registration has been accepted as complete by the Chief of Police. The term of each registration is for one year, unless the respective urgency ordinances or subsequent regular ordinances sunset before that time.	The City Council could adjust the term of each registration beyond one year, but fees for a cost recovery program would need to be adjusted accordingly for budget planning purposes.
<b>Priority Order:</b> The Chief of Police may hold one or more lotteries for the purpose of determining the priority order in which the Chief of Police will consider the registration forms submitted by collectives. Any collective that fills out the registration form for the drawing can participate in the drawing; provided it meets the requirements set forth in the ordinance and is not disqualified for specific reasons provided therein, such as having managers who are on parole for possession of a controlled substance or have a criminal record for certain violations of the penal code. The Chief of Police will set the deadlines for submittal and publish the date, time and place for the drawing, as well as the results of the drawing.	The City is open to considering other approaches.
<b>Estimated Initial Registration Fee (\$95,016):</b> Estimating the staffing needs to implement and sustain a Medical Marijuana Regulatory Program has been difficult given the final Regulatory Program that the City Council ultimately puts in place. The \$95,016 figure is staff's best estimate at establishing a full cost recovery regulatory program.	Staff may need to adjust the staffing plan accordingly to meet the final Council approved regulatory needs/requirements.

## 2. Operating Requirements

City Ordinance ( <i>Title 6 of the San Jose Municipal Code</i> )	Policy Alternative(s)
<b>Medical Marijuana Collective:</b> An incorporated association, composed solely of four (4) or more qualified patients, persons with identification cards, and designated primary caregivers of qualified patients and persons with identification cards (collectively referred to as “members”) who associate at a particulate location to collectively or cooperatively cultivate marijuana for medical purposes, in strict accordance with California Health and Safety Code Sections 11362.5, <i>et seq.</i>	The City Council may restrict the threshold of the number of patients (e.g., four or more) that are considered a collective.
<b>Safety and Security Measures:</b> Certain conditions are outlined to address security concerns, including required monitoring by a web-based closed-circuit television; centrally-monitored fire and burglar alarm system that at minimum cover the perimeter of the location and are monitored by a professional alarm company; fire-proof safe for the storing of all records required; medical marijuana storage requirements; storage of cash overnight at the location; onsite state-licensed and uniformed security guard; and, standards to prevent unauthorized entry.	The City Council could expand or decrease the safety requirements as detailed in the urgency ordinance; however, staff believes that it has put forward a minimum set of security requirements to ensure the safety of other commercial activity, residents, and surrounding neighborhood activities/uses
<b>Onsite Cultivation of Medical Marijuana:</b> Collective cultivation of marijuana at or upon the location of that Collective. (a) No cultivation of medical marijuana at the location shall be visible with the naked eye from any public or other private property, nor shall cultivated marijuana or dried marijuana be visible from the building exterior. (b) No cultivation shall occur at the location unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry are installed. (c) No manufacture of concentrated cannabis in violation of California Health and Safety Code section 11379.6 is allowed. (d) No collective shall possess more dried marijuana or plants per member other than the amounts permitted pursuant to State law. (e) No collective shall possess or provide marijuana other than marijuana that was cultivated by the collective at the location and in strict accordance with State law and the Code. (f) If marijuana is grown out doors, it must be grown in an area immediately adjacent to the physical structure where the collective meets and proper security measures must be in place to prevent non-members from accessing the marijuana growing outdoors.	The following alpha order corresponds to the “Onsite Cultivation of Medical Marijuana” provisions: (a) The City Council could lift this cultivation requirement. Staff’s purpose for placing this requirement is to ensure safety for the Collective’s operations and medical marijuana and staff believes that open view of medical marijuana may create an easy target for crime and/or theft. (b) See (a) above. (c) No policy alternative available. (d) No policy alternative available. (e) A policy alternative for the City Council to consider is allowing the off-site cultivation of medical marijuana (See Zoning/Land Use Section below for a discussion on this alternative). (f) Policy alternative detailed in Zoning/Land Use Section below.
<b>Collective Owner/Management Requirements:</b> No member convicted of a crime of moral turpitude or convicted of those crimes listed below shall have an ownership interest in the collective or be a manager for, or engage directly or indirectly in the management of the collective. Conviction within the last 10 years of any misdemeanor or felony involving: <ul style="list-style-type: none"> <li>▪ The use of violence, force, fear, fraud or deception</li> <li>▪ The unlawful possession, sale, distribution or transportation of a controlled substance</li> <li>▪ The use of money to engage in criminal activity</li> </ul> No member under the age of 21 shall be a manager for, or engage directly or indirectly in the management of the collective.	While staff has put forward the regulatory requirements for owning and/or managing a Medical Marijuana Collective, the City Council could adjust the following requirements noted below. However, the requirements are established to achieve, at minimum, the legal, responsible and adequate management of a Medical Marijuana Collective. <ul style="list-style-type: none"> <li>▪ 21 years of age or older age limit to “18 years of age or older” to align with the legal definition of an adult;</li> <li>▪ Conditions placed on a person with a misdemeanor or felony conviction; and/or</li> <li>▪ Request of staff to further evaluate the proposed management structure based on any additional input that the City Council receives, which may then require an adjustment to the staffing plan and Registration Fee.</li> </ul>
<b>Days and Hours of Operation:</b> In developing the days and hours of operation, (Monday through Friday, 9:00 a.m. to 8:00 p.m.), careful	The City Council could adjust the proposed hours and days of operation.

consideration was given to patient need to have access to the collectives at reasonable hours while also considering the needs of other commercial activity, residents, and surrounding neighborhood activities/uses. The proposed hours of operation are somewhat modeled after hours of operation for traditional pharmacies, which cursory researched showed the following: Monday - Friday: 9:00 a.m. to 7:00 p.m.; Saturday: 9:00 a.m. to 5:00 p.m.; and, Sunday: 11:00 a.m. to 5:00 p.m.	
<b>Dispensing and Packaging of Medical Marijuana:</b> The ordinance establishes that no medical marijuana shall be dispensed by the collective or any of its members to a member more than once per day and establishes several packaging requirements that result in some ability to track product information and some health and safety notifications, including that all medical marijuana shall be packaged in a childproof container that clearly states the complete name of the qualified patient; name, address and onsite telephone number of the collective; the amount of medical marijuana in the container; the name of the attending physician recommending the use of medical marijuana; the date the medical marijuana was provided; list of chemicals and/or substances used during processing of the medical marijuana, etc.	The City Council could increase the number of times that a Medical Marijuana Collective can dispense medical marijuana to a member. The City Council could also expand or lessen the packaging requirements proposed for medical marijuana.
<b>Maintenance of Records &amp; Independent Audits:</b> Each Medical Marijuana Collective shall maintain, at the premises and in a fireproof safe, all records and documents required by the City, including but not limited to: the name, address, and telephone number(s) of the owner, landlord and/or lessee of the location; member information (name, copy of a valid government issued photo identification card or license); a copy of the member's identification card or the physician's recommendation; date the member joined the Collective; up to date information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the Collective; all receipts of the Collective; up to date log documenting the date, time, nature and response by the all complaints received by the collective; up to date log documenting each transfer of medical marijuana reflecting the amount, date and time provided and the full name of the member to whom it was provided to, etc.	No Policy Alternative Provided. The Ordinance outlines the minimum requirements for the maintenance of records to properly and professionally review the Medical Marijuana Collectives' activities. Adjusting the proposed requirements for the maintenance of records is not recommended and would adversely impact the City's ability to adequately support this Regulatory Program.
<b>Sale of Ancillary &amp; Manufactured Products or Paraphernalia Prohibited</b>	No Policy Alternative Available.

**NOTE: Individual Use:** The ordinance allows for the cultivation and possession of medical marijuana for medical use by a single qualified patient or primary caregiver. Key features in the ordinance for personal use include that cultivation is limited to an areas not to exceed 50 square feet per residence (a legal dwelling unit) and cultivation of medical marijuana for personal use shall be in conformance with the following standards:

- Residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities;
- Medical marijuana cultivation shall remain at all times secondary to the residential use of the property;
- Qualified patient or person with a identification card shall reside in the residence where the medical marijuana cultivation occurs;
- Medical marijuana cultivation area shall be in compliance with the current adopted edition of the California Building Code;
- Cultivation shall not adversely affect the health or safety of the residence in which it is cultivated or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts; or, be hazardous because of the use or storage of materials, processes, products or wastes;
- All electrical equipment used in the cultivation of medical cannabis shall be plugged directly into a wall outlet or otherwise hardwired, the use of extension chords to supply power to electrical equipment used in the cultivation of medical marijuana is prohibited;
- From a public right of way, there shall be no exterior evidence of medical marijuana cultivation occurring at the property; medical marijuana cultivated or processed for personal use as provided herein shall not be distributed to any person or collective;
- Medical marijuana cultivation lighting shall not exceed 1200 watts; and,
- Medical marijuana sale is prohibited.

**Policy Alternative:** The City Council could choose not to impose any specific requirements for the personal use of medical marijuana or adjust the above requirements.

### 3. Taxing Marijuana Businesses

City Ordinance	Policy Alternative(s)
<p><b>Ballot Measure:</b> There are two separate policy options available for City Council consideration related to placing a City tax measure on the November 2010 ballot. These options are outlined below.</p> <p><b>Policy Option 1:</b> A single marijuana business tax rate to be determined by the City Council.</p> <p><b>Policy Option 2:</b> A tiered marijuana business tax rate with the option of setting two separate tax rates of gross receipts for medical and non-medical marijuana, to be determined by the City Council.</p>	<ol style="list-style-type: none"><li>1. "No change." Maintain current business tax rate without additional gross receipts application.</li><li>2. Tax legal uses only</li><li>3. Explore other California cities proposals (tax bases on square footage, etc.)</li></ol>

**NOTE:**

**State Ballot Measure:** Under the provisions of the *Regulate, Control, and Tax Cannabis Act of 2010* currently on the November ballot, a local government may adopt regulations to permit the retail sale of marijuana, subject to certain limitations. If the voters approve the Act, and the City proactively obtains voter approval to implement a new gross receipts business tax on cannabis businesses (the "Tax") on the same ballot, then the City would be poised to begin imposing and collecting the new gross receipts business tax. The ability to collect the Tax would be subject to City Council's decision to permit the retail sale of marijuana in San José in the future and implement the necessary zoning and ordinance changes to be consistent with State Law.

**Policy Option:** Council can decide to delay any potential City Tax Measure taxing cannabis businesses until after the November Election

- Next election opportunity would be in 2012, unless the City Council unanimously votes to declare a fiscal emergency
- A special tax can be voted on at any election but
  - Requires 2/3 voter approval
  - Tax revenues must be dedicated to specific purposes

**Revenue:** The draft ordinance for the Regulatory Program prohibits the collectives from generating a profit, which is not the same as being a non-profit under Federal and State law. Not making a profit does not relieve the collective of their business tax liability. Absent the non-profit tax designation, the collectives will be subject to the City's Business Tax Ordinance.

Only in-kind contributions and reasonable compensations to primary caregivers for services rendered will be allowed and only under the strict compliance with State Law. Given the limitations imposed by State Law on the ability of collectives to engage in sales for profit, the revenue generating potential of raising significant new revenues even if the voters were to pass a new tax on Medical Marijuana Collectives is small based on the proposed Regulatory Ordinance.

**Sales Tax:** Staff is reviewing medical marijuana as a potential source for sales tax revenue. According to the State Board of Equalization (SBOE), the sale of medical marijuana is taxable. Not making a profit does not relieve the seller of his or her sales tax liability. Under the current draft ordinance, the potential for sales tax revenue may be less based on the value placed on the bartered-for-exchanges or in-kind contributions.

#### 4. Land Use Policy

City Ordinance (Title 20 of the San Jose Municipal Code)	Policy Alternative(s)
<p><b>Commercial General Zoning District &amp; Sensitive Uses:</b> The Commercial General Zoning District is best suited to Collectives because this District is typically located on major streets with public transit and is not always located adjacent to neighborhoods. For this reason, the Administration is recommending that Collectives be allowed only in the Commercial General (CG) Zoning District, as long as the location at the time of issuance of a zoning code compliance certificate is not within 500 feet of the enumerated <i>sensitive uses</i> such as: Residential Use, School, Child Day Care Center, Church that includes a school or child day care, Community or Recreation Center, Park, Trail, Library, Substance Abuse Rehabilitation Center, Another Medical Marijuana Collective</p>	<p><b>Industrial Zoning:</b> Allow these uses in another Zoning District, such as permitting this proposed activity in the Industrial Park or Combined Industrial/Commercial Zoning District. Staff is opposed to Collectives locating in any Industrial Zoning District given the City's longstanding challenge to attract and retain jobs to secure fiscal sustainability. The employment lands zoned Industrial need to be preserved and used for industrial, economic development purposes. The introduction of Collectives could compromise the availability of land for future businesses entering the City's Industrial Areas. For these reasons, the Administration recommends that the Commercial General Zoning District is the only logical zoning district for Medical Marijuana Collectives given their commercial nature.</p> <p><b>Distance Requirement from Sensitive Uses:</b></p> <ul style="list-style-type: none"> <li>Adopt a 1,000 feet distance requirement from sensitive uses and/or remove some of the proposed sensitive uses. As sensitive use categories or distance requirements from the proposed sensitive uses are added to the proposed land use policy requirement, the number of potentially eligible sites is reduced significantly.</li> <li>Remove entirely a distance requirement from sensitive uses and the concept of a sensitive use.</li> </ul>
<p><b>Off Site Cultivation:</b> The Administration's recommendation to allow only onsite cultivation is based on the desire to ensure a "closed-loop system" where the distribution of medical marijuana is easy to trace back to the cultivation of it. The primary concern is to ensure that the medical marijuana is not diverted from or to non-legal uses, and to enable adequate regulation of Medical Marijuana Collectives during a time of implementation of these ordinances and transition for the City. If the City Council is interested in exploring this policy alternative, staff needs to complete its evaluation and return with recommendations, including a revised land use policy, staffing plan, and revised Registration Fee.</p>	<p>Permitting off-site cultivation, while doable, presents additional regulatory issues for the City to resolve. If the City Council is interested in exploring this policy alternative, staff needs to complete its evaluation and return with recommendations, including a revised land use policy, staffing plan, and revised Registration Fee.</p>
<p><b>Zoning Compliance Certificate (No Land Use Permit):</b> The Administration recommends Title 20 language for the Department of Planning, Building, and Code Enforcement (PBCE) to complete a ministerial "Zoning Verification" for any proposed Collective to document that it meets the zoning, location, and distance criteria from sensitive uses. Since there would not be a requirement for a land use permit for a Collective, Council Policy 6-30: Public Outreach Policy for Pending and Development Proposals would not apply.</p>	<p>The City Council could direct the Administration to require a Conditional Use Permit (CUP) for Medical Marijuana Collectives. Such a permit would "run" with the property regardless of the operator or business. If a Collective were to leave the location, the property owner would be required to seek an amendment to the CUP before any other uses would be allowed on the property, and before he or she would be able to rent or lease the property out for use by business that were not Medical Marijuana Collectives. The Administration recommends a registration approach so that the property owner is not limited in his or her options and is not required to incur the expense of applying for an amendment to the CUP should the collective choose to cease its operations. (I don't believe this is true. The ordinance provides that the registration is not transferrable, meaning you can't transfer it to another business or location. If you allowed it to be transferrable you would do away with the City's ability to ensure the new location and individuals comply with zoning and Title 6 regulations. If the City Council would like to pursue a CUP, the Administration would need to reassess the administrative approach for registering a collective because a requirement for a land use permit, in addition to registration with the Police Department, would be burdensome on a collective as well as staff intensive. If a CUP is directed, a more streamlined administrative process would need to be developed.</p>

**Public Noticing:** A Zoning Code Compliance Certificate does not have a public outreach or noticing requirement.

Given the concerns expressed about where a Medical Marijuana Collective may locate, the City Council may be interested in having staff develop a noticing process that would only be used to structure a Collective's operation plan toward mitigating impacts to surrounding businesses or other activities.